IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1577 OF 2007

Vikas Chhagan Shirsath. ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.D.S.Chandnani, Adv. for the Applicant.
Mr.S.V.Kotwal, Adv. for orig.complainant.
Mrs.A.S.Pai, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 25th June, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant, the learned Advocate for orig.complainant and the learned APP for the State.

2. The applicant is seeking anticipatory bail in C.R.No.499 of 2006 of Kothrud Police Station, Pune. The said case is under Sections 366, 376 of IPC.

3. The prosecutrix was 18 years of age at the time of the incident. She knew the applicant

prior to the incident as he was residing opposite her house. The applicant used to telephone the prosecutrix. So also the prosecutrix used to call the applicant on his mobile and chat with him. Thereafter the applicant told the prosecutrix "you are mine. I cannot leave you.". On 5.8.2006 the applicant telephoned the prosecutrix stating that they will go for a trip. She agreed to go with him for a trip. From Pune they went to Lonawala for the trip. Thereafter they came back to Pune. When they came back to Pune the sister of the prosecutrix saw them and the sister of the prosecutrix told her that she would tell their mother about this fact. Hence, the prosecutrix telephoned the applicant and told him that her sister would tell her mother about the fact hence the prosecutrix was going to Dhule.

4. It is the case of the prosecutrix that the applicant asked her not to go Dhule and threatened her. The prosecutrix has stated that she wrote a letter addressed to her mother and thereafter she took her clothes and went to bus-stand. There she telephoned the applicant; whereupon the applicant came to the bus-stand. Thereafter the applicant

and the prosecutrix bought tickets to Chennai and they travelled by train to Chennai.

5. It is the case of the prosecutrix that they stayed in some hotel in Chennai for over 15 days. At that time, the applicant told her that he was going in search of a job and every morning he went away after locking her in the hotel room and came back in the night. It is her case that at that time the applicant also had sexual intercourse with her. Fifteen days thereafter she was taken to Court and made to sign in the register and she was informed that she and the applicant had performed registered marriage. Thereafter they came back to Mumbai. They travelled to various placed by rickshaw. Then the prosecutrix and the applicant started residing in a house. Thereafter the prosecutrix as per her wish took up a job in a call-centre. It is her case that the applicant used to leave her at the call-centre and wait outside and pick her up in the evening.

6. The facts *prima facie* show that it was a *case* of consent. It appears that the prosecutrix has voluntarily of her own accord gone with the

applicant to various placed and that sexual intercourse was also on account of consent.

7. As stated earlier, the prosecutrix was 18 years of age at the time of the incident. The learned Advocate for the complainant has submitted that the prosecutrix was below 18 years of age and hence case under Section 366 is made out. However, from the record it appears that the prosecutrix though she may have been under 18 years of age she very well knew the nature and consequences of her act. During the train journey to Chennai and other places and during the time that she was kept in the hotel she has not made any attempt to escape or to seek help from anyone. Though she was staying in a hotel she could have called out to the hotel staff or others for help. If she was not a willing captive she could have called out for help, but she has not done so. When she has taken to Court for registering marriage at that time also she could have sought help. However, she has not done so. Thereafter, both the applicant and the prosecutrix have resided in a house together. At that time also she has not made any effort to seek any help or to

contact her family members or run away. During this period though she was working in a call-centre where telephones are very much available, she has not made attempt to contact any family members or any friend or anyone to seek help. Thus, it appears that the prosecutrix has left her home of her own accord and she has willingly accompanied the applicant. Moreover, it appears that she very well knew the nature and consequences of her act.

8. In this view of the matter, I am inclined to grant anticipatory bail to the applicant.

9. In the event of arrest, the applicant - Vikas Chhagan Shirsath to be released on bail in the sum of Rs.20,000/- with one or two sureties to make up the said amount. The applicant shall report to Kothrud Police Station, Pune everyday for a period of two weeks starting from 28.6.2007 from 11:00 a.m to 2:00 p.m.; and thereafter once in a fortnight, till conclusion of the trial.

10. The observations made in this order shall not influence the trial Court in any manner while

disposing the trial.

11. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)